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ABSTRACT

This report has been prepared to increase the general awareness of how serious a problem corporal punishment can be and also to contribute some possible corrective steps. The document consists of (1) a summary of the current situation, (2) specific civil liberties considerations, (3) harmful effects, (4) illustrative case reports, (5) recent court action, (6) State statutes, and (7) public attitudes. (Author)

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ACLU REPORTS

CORPORAL PUNISHMENT IN THE PUBLIC SCHOOLS

The Use of Force in Controlling Student Behavior

by

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March, 1972

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AMERICAN CIVIL LIBERTIES UNION

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INTRODUCTION

The American Civil Liberties Union believes that the use of corporal punishment in public schools is a manifest denial of civil liberties of students which raises questions concerning the constitutional rights of students and the exercise of authority in educational institutions. The Union believes that the use of such punishment also seriously injures the mental health, education and quality of the future citizenship of children and young people.

In hopes of increasing the general awareness of how serious a problem this is and thus contributing to corrective steps, the Union has prepared this report,* which consists of seven sections:

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* By Alan Reitman, Associate Director, ACLU; Judith Follmann, Staff Associate for Civil Liberties in Education; Edward T. Ladd, Professor of Education at Emory University, and with the research assistance of John Rusch, Princeton University Student, ACLU intern.

A SUMMARY OF THE CURRENT SITUATION

Physical punishment has been administered in our schools since their beginning in colonial days and has been sanctioned by the common law for centuries. Over the years, courts have prescribed "excessive" bodily punishment but the "reasonable" use of this practice has been upheld. Increasingly it is sanctioned by statute. (See below, State Statutes) In earlier times, school people used to recommend "corporal punishment" as a standard procedure to be used regularly with all children and young people. With the growth of humanitarianism and of psychological knowledge, however, members of the educational profession have been gradually abandoning the practice, and there are now many schools and school systems where its use would be unthinkable.* Yet across the country most teachers and principals still favor keeping it as an option. In a 1969 survey conducted by the National Education Association, 65% of the elementary school teachers polled and 55% of the secondary school teachers'

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* The move to end physical punishment in the schools is not confined to the United States. A British organization called STOPP (Society of Teachers Opposed to Corporal Punishment) has been working towards this end for some time. Last November, their efforts bore some success. Over the strong objections of the London Head Teachers' Association, which represents 770 headmasters and principals, the Inner London Educational Authority announced that caning will no longer be permitted in London's elementary schools. Caning has already been banned in most European countries.

said they favored "judicious use" of violent bodily punishment in their respective levels of school.[1]

Teachers in Pittsburgh, Pa. have been particularly vocal in advocating the use of corporal punishment in the schools. Two years ago, 73% of the teachers are reported to have signed a petition asking that a ban on spanking, which was of some two years standing, be lifted.[2] In a letter to the Pittsburgh Post-Gazette (December 6, 1971), the Vice President for Elementary Schools, Pittsburgh Federation of Teachers wrote:

> The vast majority of parental groups questioned about corporal punishment felt that it should be retained in some manner, but the Pittsburgh School Board chose to go completely against the will of the people and do instead what they wanted to do. I may add that the Board is presently re-evaluating its existing corporal punishment policy*
>
> Hopefully, corporal punishment will be reinstated as one of the effective aids in dealing with discipline problems. The Philadelphia School Board recently reinstated it.

A comment made by the President of the Pittsburgh Teachers Federation is instructive: "Until somebody comes up with an alternative, we'll support it (corporal punishment). It's a quick way to show disapproval - like the city giving me a ticket when I park illegally."[3]

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*A Three-Year plan to phase out corporal punishment in Pittsburgh is already in effect.

It is unfortunate that so many teachers and principals appear to be unaware that effective and more humane alternatives do exist and are readily available. Testifying before the Maryland State Board of Education on a bill to abolish corporal punishment, Dr. Charles T. McElvaney stated:

> There are today means of sustaining desirable behavior or modifying undesirable behavior which are precise, specific, predictable, and effective. The methods have been demonstrated, supported by research findings, and are continuing to be developed. Materials* procedures, and personnel are available to make these methods available to educators who do not already have them. A reinforcement system relying primarily on a reward system is used. There are ways of making undesirable behavior unrewarding and it disappears.[4]

As to the actual use of violent bodily punishment in schools, the evidence is that, while greatly diminished, it is still common. There has been no nationwide survey of the practice, and in fact such a survey would be hard to carry out with validity, since in many of the larger school districts, where it is heavily used, it is a violation of official local policy. But there is abundant evidence that each year tens, if not hundreds of thousands of

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* Example: Buckley, Nancy K. and Hill, M. Walter - Modifying Classroom Behavior, A Manual of Procedure for Classroom Teachers, Research Press Company, Champaign, Illinois (For additional resources, see Note 20.)

children and, to a lesser extent, adolescents, are subjected to it.

SPECIFIC CIVIL LIBERTIES CONSIDERATIONS

The U.S. Supreme Court, in its historic 1943 decision (West Virginia State Board of Education v. Barnette)[5] upholding the right of public school students to refuse to participate in patriotic exercises, clearly defined the school's responsibility to adhere fully to constitutional standards:

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures -- Board of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.
>
> Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less vigilant in calling it to account.

The rights of children in a democratic society are necessarily qualified by their emotional, biological, and social immaturity and the fact of their dependence on the adult world. Children are subject to the control and protection of not only their parents but a number of institutions, such as schools, agencies, and the courts. The issue, therefore, is not whether a child's liberties are the same as an adult's, but how the limits of adult control may be drawn so as not to infringe on the child's right to grow in freedom in accordance with the spirit of civil liberties embodied in the Constitution.

In recent years the Supreme Court and other federal courts have clearly established that there is no cut-off age where constitutional rights are concerned. Shedding long-held reluctance to interfere with the authority of school officials, many jurists have struck down regulations found to be arbitrary and unreasonable and ruled that students are entitled to constitutional protection. In the words of the Supreme Court: "School officials do not possess absolute authority over their students. Students in school as well as out are 'persons' under our Constitution." (Tinker v. Des Moines Independent Community School District).[6] The infliction of corporal punishment constitutes a major incursion into guaranteed constitutional rights in several ways:

Violent Bodily Punishment Infringes on the Right to Due Process

The courts have exhibited a particular interest in extending the protection of due process to juveniles. In the landmark Gault decision, Mr. Justice Black wrote, in a concurring opinion: "Appellants are entitled to these rights (the essentials of due process) . . . because they are specifically and unequivocally granted by provisions of the Fifth and Sixth Amendments which the Fourteenth amendment makes applicable to the states."[7] Several federal and state courts have also recently ruled that public school students facing the punishment of expulsion are entitled to a hearing consistent with procedural due process of law.

The public school is an instrumentality of the state. Pun-

ishment meted out by the public schools acquires the status of a government act and is, therefore, subject to the restraints of the Constitution.

The Fifth and Fourteenth Amendments provide that no one shall be deprived of "life, liberty, or property" without due process of law. Implicit in these provisions is the right to bodily integrity, the violation of which must be interpreted as a deprivation of liberty. The preservation of physical integrity against illegal intrusion has well established legal precedents. It is the motivating concept behind our criminal law statutes dealing with assault, battery and murder. These statutes provide that duly constituted authorities may deprive a person of life, liberty or property only in accordance with due process of law. By extension it would seem that the right of the state or its agents to administer bodily punishment without due process of law is open to serious constitutional challenge.

In governmental, quasi-judicial bodies, the Fourteenth Amendment guarantees the right of due process to any person facing charges for which the punishment therefore involves interference with or abrogation of a constitutionally-guaranteed right. This process normally includes: (1) notification of charges; (20 the right to counsel, (3) opportunity to rebut charges in a fair hearing; and (4) a separation among accuser, judge and executioner.

The due process provisions of the Fifth and Fourteenth Amendments are intended to guarantee all persons fair and impartial procedures of justice, free from arbitrary and capricious government actions. Corporal punishment, by its very nature, contravenes these safeguards.

> Observers who have noted types of behavior to which teachers and principals have responded with corporal punishment have found great variety and inconsistency. It appears that the same behavior which causes one teacher to turn to the "last resort" doesn't disturb another, or is handled in another manner. . . the selection of children to be hit seem quite inconsistent and arbitrary.[8]

While schools cannot be expected to provide formal procedural due process whenever a classroom regulation is flouted, in administering justice teachers should be guided by the requirements of due process. The classroom offers the ideal environment to inculcate in children the concept of democratic behavior within a framework of rules. Children have their first close continuing contact with formal authority in the schools; here they acquire attitudes towards liberty and authority that are of lasting influence. As an advocate of the Constitution and an exponent of its principles, the teacher has a unique opportunity to exemplify the spirit and practice of fair play and procedures. Such exemplification is ill served by the sweeping dispensation of summary justice by force which deprives students of liberty without due process of law and undermines respect for the democratic process.

<u>"Corporal Punishment" is Cruel and Unusual Punishment</u>

The Eighth Amendment to the United States Constitution, bind:

not only upon courts but upon all government agencies and upon the states by the Fourteenth Amendment, prohibits the use of cruel and unusual punishment. At the root of the cruel and unusual punishment proscription, says the Supreme Court, is "nothing less than the dignity of man."[9]

The goal of education in a democracy is inextricably linked to enhancement of the dignity of man. It is, therefore, startling to confront the fact that schools are the one remaining institution in this country where corporal punishment may be legally inflicted. As far back as 1853, the Indiana Supreme Court said:

> The public seems to cling to the despotism in the government of schools which has been discarded everywhere else. . . The husband can no longer moderately chastise his wife; nor . . . the master his servant or apprentice. Even the degrading cruelties of the naval service have been arrested. Why the person of the schoolboy. . .should be less sacred in the eyes of the law than that of the apprentice or the sailor, is not easily explained.[10]

It must also be noted that in most states, if not all, even felons are now protected from physical abuse because of public indignation over such brutality. As the situation now stands, corporal punishment may be visited upon school children for the "crime" of talking without permission or not dressing for gym, but not upon felons convicted of such major crimes as rape, armed robbery or murder and who have, in fact, received the benefit of due process in the courts.[11]

Thus, the inflicting of violent bodily punishment on citizens

by public servants is indeed "unusual" at this point in time in our society as a whole.

On its face, the practice is cruel, especially when it is used on absolutely defenseless children and young people by a government employee who may be strongly disliked or who may be essentially a complete stranger. Were we not inured to it by ancient tradition , we would recoil with horror as we would were a policeman, probation officer, camp counselor, or prison official to engage in it without a parent's permission. Dr. David Gil, Professor of Social Policy at Brandeis University, one of the nation's experts on child abuse, and author of "Violence Against Children", a report of findings of a study done for the Department of Health, Education, and Welfare, asserts that the practice is unconstitutional and urges its elimination from the school system.[12]

Corporal punishment is morally and constitutionally unsound. It breeds violence and assaults the rule of law. It risks long-term dangers in the search for short-term effectiveness. The cost to our children and the nation is intolerably high.

In Loco Parentis -- A Spurious Argument

Historically, the doctrine of in loco parentis is derived from an Eighteenth Century principle enunciated by the English jurist, Blackstone.[13] He reasoned that the private tutor, who contracted to teach the child of a wealthy landowner, had the legal right to

deal with an infractious child as the parent would in the same situation, including the use of reasonable corporal punishment. Extension of this doctrine to the compulsory public school, however, has always rested on questionable assumptions. It is a quite improper basis for defining the limits of the authority of officials in today's large bureaucratized school systems which children and young people up to age 16 or over are forced by law to attend.[14]

The teacher-child relationship in Blackstone's day was posited on a one-to-one basis. By comparison, today's child may have as many as one hundred teachers during his primary and secondary school education. In addition, the child must encounter other persons with varying status and powers while away from home and in classrooms that contain up to thirty persons per class. The tremendous divergence between the two situations is obvious.

Although in loco parentis is an outmoded concept and inapplicable to the current educational system, the majority of the nation's schools remain steeped in its traditions. Following long-established patterns, school authorities continue to impose on students standards of dress and behavior they deem appropriate, regardless of whether the students or their parents agree. When conflicts arise between parental preferences and school regulations, school authorities usually stand firm on their right to prevail.

The most publicized examples of such disagreements have occurred over questions of dress and grooming. Not infrequently, parents

have supported their children's right to wear their hair in styles of their own choosing. Nevertheless, in numerous instances, school officials have totally disregarded the parent's views and taken punitive action against students who refused to conform to school regulations. Similarly, students in public schools may be struck, paddled or whipped in school at the discretion of a teacher or principal, even though their parents may strongly disapprove of corporal punishment as a disciplinary measure. In such situations, school authorities do not contractually take the place of parents, but rather render themselves superior to the parents.

In increasing numbers parents are protesting that laws governing corporal punishment in the schools constitute an infringement of their parental rights. As the Citizens Against Physical Punishment of Dallas, Texas has put it: "The law does not require parental involvement or approval, and, therefore, parents who object to the use of corporal punishment are forced by compulsory school law to place the child in school and then forced by states to accept corporal punishment. This creates a situation of jeopardy and leaves no recognition whatsoever of the moral or religious convictions of the parents. . ."[15]

The Supreme Court, in the 1925 decision of Pierce v. Society of Sisters,[16] recognized the right of parents "to direct the upbringing "of their children. The infliction of corporal punishment on students without first obtaining such consent is an impermissible

trespass on this right.

HARMFUL EFFECTS

If many frustrated or harassed practitioners swear by the practice of corporal punishment, no disinterested student of school discipline, on the other hand, has concluded that it is of any great value even for the immediate, practical purpose of controlling misbehavior. Obviously it can intimidate almost any student briefly. But the evidence indicates that, except with students on whom other punishments or non-punitive approaches would be at least equally effective, and on whom it is hence less likely to be used, it is effective at best for a very short time and in a very restricted setting, and soon has after-effects which are the opposite of what is intended. It is almost impossible for teachers or school administrators to cow a child or adolescent permanently. Thus,

> It has been repeatedly observed that the same children are paddled (spanked, whipped, hit) over and over again. The evidence implies that corporal punishment does not work. Some studies have shown that corporal punishment is not effective in reducing behavior problems. Others have indicated that schools using corporal punishment have more behavior problems.[17]

In fact, summarizing the research on aggressiveness in children, the well-known child psychologist Boyd R. McCandless concluded that

> In our society, aggression is 'circular.' The child is aggressive, his parent or teacher retaliates, the child is further angered and frustrated and thus more aggresive, and so on.[18]

One reason why violent bodily punishment is ineffective over any period of time is that it is a tactic easily used for a great

variety of frustrating conditions which hence saves the teachers or principal -- as well as the victim -- from having to diagnose and treat cases individually, identifying and dealing with the specific factors in each which are responsible for the unwanted behavior or attitude. Children and young people whose aggressiveness or disobedience requires attention fall into many different categories, and the kinds of attention called for differ radically. Treating them all with physical violence is swift and, for the adult at least, comfortable, but it takes the place of an educational or therapeutic approach. There are basic differences between the "tough guy" of the class, who seeks to prove his bravery and win his classmates' admiration by showing that he can stand up to the teacher and "take it" if punished, and such other types of children as "(a) delinquent children whose code of violence is only further enhanced by spanking; (b) suspicious children, who provoke the adult to 'prove' his enemy status in their eyes; (c) children who are having trouble in the learning process and who express their frustration, anxiety or guilt in aggressive actions which draw punishment, which then further alienates them from learning; and (d) the 'cash and carry' customer, who cheerfully submits to punishment so that he can continue a pattern of irresponsibility for his own actions."[19] Physically assaulting a student of any of these types is an appealing way for the teacher or principal to extricate himself from an unpleasant situation at the cost of taking professionally defensible, individually-tailored measures.

If it were clear that violent bodily punishment is a particularly effective means of keeping or restoring discipline, or that a great variety of better disciplinary approaches is unavailable, there might be some justification for allowing the practice. Neither is the case.[20]

The most important fact about violent bodily punishment is the high probability of its doing the victim an affirmative injury, psychological, educational, or both. While the kind of injury may vary considerably, depending on the age and emotional condition of the victim, it is likely to be serious.

One universally recognized purpose of good school discipline is to strengthen the child's or adolescent's self-control; another is to weave him sastifactorily into the existing adult society. Building self-control in a young person hinges on building his self-respect, which in turn hinges on adults' showing respect for him and developing his trust in his ability to learn to cope satisfactorily with society.[21] The young or emotionally less stable students are likely to interpret physical pain as a personal rejection by school officials This in turn tends to produce fear or anxiety and a defensive or rationalizing posture which those same school officials are in a particularly poor position to straighten out. Fear and anxiety, once stirred up in a child, are likely to interfere significantly with the learning process and decrease the effectiveness of the teacher-student interaction necessary for learning. Above all, they are

blocks to the development of the emotional strength and maturity necessary for eventual self-discipline.

In the case of high school students, whose personality characteristics are, for better or for worse, more firmly established and less amenable to influence by school, the most significant feature of violent bodily punishment is probably its humiliating character -- the young person in the process of becoming adult is treated like a little child. This humiliation may have the same deleterious effects on his self-respect as those discussed in regard to the younger child. It is also likely, however, to breed greater defensiveness, resentment, and hostility. Since adolescents are more discriminating than children, though, they are also more prone to attach importance to the personal factors in the surrounding situation, concluding, for example, that it is not they that are at fault, but that this particular teacher has it in for them or that that particular principal is a racist. Thus the adolescent is very likely to become aggressive toward the school, as well as alienated from the adult world and its values, and hostile to them,[22] the exact opposite result from what the school is supposed to achieve.

There are other characteristics of violent bodily punishment which make tolerance of the practice in public schools a threat to students' welfare.

First, there is convincing scientific evidence that in the case of smaller children, harsh treatment of one of their number

produces a "ripple effect"; which sends emotional disturbance and anxiety through the whole group, thus doing a disservice to the innocent.

Second, the option of violent bodily punishment is enormously tempting to a frustrated, exasperated, or angry teacher or administrator, much more so than any other option, and, it can be enormously satisfying to administer. Hence the practice is unavoidably subject to serious abuse.

Third, perhaps the most serious danger of all, adults administering violent punishment provide young misbehavers and their peers with models of violence, and perhaps also of the discarding of inhibitions against indulging in physical aggression, which undoubtedly contribute to violent tendencies in later life. Modern psychological research has made clear the very great part which the imitation of models plays in the development of the young:

> Children imitate or model upon aggressive adults; thus the finding is reasonable that arbitrary and unreasonable methods of control and high levels of physical punishment are associated with aggressive child (and adult) behavior.[23]

It can hardly be entirely due to other factors that the sectors of greatest violence in our national life tend to be the sectors where violent bodily punishment is most common in the schools. In this connection one cannot but think of the early lives of a Lee Harvey Oswald, a James Earl Ray, and a Charles Manson.

Finally, there is substantial evidence to suggest that the experience of violent bodily punishment in youth, particularly on the buttocks, strengthens tendencies toward sexual aberrations in later life

ILLUSTRATIVE CASE REPORTS

Pittsburgh

As noted earlier, Pittsburgh's teachers have been among the most resolute in upholding the right to use corporal punishment. This accords with reports of blatant abuse in that city which have come to the attention of the Committee for the Abolition of Corporal Punishment in the Public Schools. Some typical examples follow:

> At Philip Murray School the parents have been disturbed by what they feel have been excessive punishments. It has been reported to us by Mrs. _____ and others that last spring (1967) children were being detained after school and made to stand at attention for 1 to 1-1/2 hours as a punishment for being tardy more than three times. It has been further reported that children who could not stand at attention long enough were made to stand in a bent-over position with books on their backs to keep them in this position for some time.
>
> When Mrs. Nancy Van Vuuren substituted at Fifth Avenue High, she had approximately 70 children in a music class. She asked another teacher in the school if he had any suggestions for controlling such a large group. To her surprise, he offered to beat a child in front of the class as an example. She declined. This teaching technique is frequently used at many schools.
>
> Larry ____, a third grader at Linden School, was paddled on his bare skin allegedly because he was insolent. The parents had asked that they be consulted before administering any severe punishment to the child, but the parents were not even told that the child had been paddled. They became aware of the incident when they observed stripes and welts on his back.
>
> A well-known incident occurred at Linden School, in Miss Jamison's sixth grade class. Noam Kaufman made a paper airplane and for this offense was made to stand in front of

the class and was allegedly told to eat the paper airplane or be taken to the principal's office and be paddled. (The paddle is an ever-present threat at Linden School.) The boy reportedly chose to eat the airplane. He was then taken to the principal's office and paddled anyway. He was paddled by both the principal and the teacher and then he was made to go back in front of the class and apologize to them. This boy's family are Israelis and do not have complete command of our language. The boy has a withered hand and has thus been incapacitated since birth. The father has been in the hospital for several months due to a very serious auto accident. The child is known to have problems that might have been handled by more constructive techniques.

At the Belmar School, Mrs. _____ was tutoring a child in a room adjacent to the general office when the assistant principal, Mr. Simonds, strode in and took from the file cabinet a stout paddle about 10 or 12 inches in diameter. A moment later, she heard him in the general office shouting violently at a youngster, accompanying his shouts with six loud blows from the paddle. A few minutes later another child was sent to the office for punishment. This time the paddle was not used. The assistant principal again raged at the child, and Mrs. ____ was genuinely alarmed by what sounded like a body hurtling against the chairs, tables and bookcases lining the room next to them. She was shaken by the piteous protests from the child. Other observers at Belmar have witnessed such scenes frequently. This was not an isolated incident. A social worker, Mr. Matthew English, reports ten to twenty paddlings every day at Belmar.

A particularly vicious case involved a ten year old girl at Woolslair School who was beaten with a belt by a teacher who habitually carried his belt rolled up in his hand and not only threatened to use it but did use it. The girl, who had recently had an operation, was beaten on the buttocks for allegedly mumbling something under her breath. The father of the child was in the hospital at the time of the incident and when the mother saw the welts on the child, she took her to the hospital for treatment. This teacher was the regular class teacher. He knew the child's medical history and, from reports of another mother from that school, the man had been there for several years and frequently threatened the children with his belt.

> In a shop class for Linden School pupils, a teacher grabbed a seventh grade boy by the throat, pulled him out of his seat and slammed him against the wall. The boy had allegedly mumbled something under his breath. The parents went to speak to the assistant superintendent about the incident. The parents reported that the superintendent told them, during the course of their conversation, that they did not like to put boys into the Scholar's Program if they have trouble-making parents. The father of this boy is a professor of physics who occasionally did some demonstrations for the boy's science class. Because of this and other contributions to the school, they did not consider themselves trouble-makers.

Boston

Marvin Katz and Peter Aron describe these incidents of corporal punishment in the May 1971 Harvard Civil Rights - Civil Liberties Law Review:

> For alleged misconduct, Jeannette Watts, a 14 year-old student at the Patrick F. Gavin School in Boston, was struck by her teacher on her cheek and fell as a result of the blow. Another teacher grabbed her by the hair, forced her to the floor, and slapped her in the face. For disciplinary reasons, a teacher took hold of a 14-year-old ninth grader, Margaret Populo, punched her in the face, and ripped a pierced earring off her ear. Thirteen-year-old James Watts received two blows on the palm of each hand with a bamboo rattan, causing sharp twinges, a welt, and broken blood vessels under the skin. Many other instances of corporal punishment were also charged.

Jonathan Kozol, who taught for one year in the Roxbury section of Boston, describes one instance of corporal punishment, where a young boy was sent to the school's cellar to get a rattaning for talking in class. Frederick, the young boy, had an infected knuckle before the rattaning; when the teacher

rattaned him, he struck Frederick's knuckle. As a result of the rattaning, Frederick's finger became more infected and when he went to the City Hospital for treatment the doctor treating him felt it necessary to put Frederick in the hospital for several days. The aggravated injury left Frederick with a large raised scar that is probably permanent. According to Kozol, "Frederick's medical records afford confirmation of this injury although . . . the /school/ records do not make any mention of the whipping."

Kozol also notes some of the teachers' comments on how to improve the use of the rattan:

"When you do it, you want to snap it abruptly or else you are not going to get the kind of effect you want."

"Leave it over-night in vinegar and water if you want it to really sting the hands."

Was it against the law to strike a child, particularly in this way? "Don't worry about the law. You just make damn sure that no one's watching."[25]

Detroit

In 1967, the Detroit branch of the ACLU of Michigan made an extensive investigation into the use of corporal punishment in the Detroit school system. The complaint described below is "typical" of the many complaints received by the Detroit branch.

Mrs. C. reported that her 11-year-old son was severely spanked with a paddle in the Custer School for talking in class without permission. When he returned home for lunch, his posterior was so painful that he could not sit down at the table, and this led his mother to inquire as to what had happened. When Mrs. C. attempted to obtain redress of grievances, she was told:

> By the police: That there were no grounds for criminal action against the offender;
>
> by the assistant principal: That teachers had a right by state law "to whip them" /children/.

Mrs. C. also has a daughter who, while attending the Custer School, was struck on the hand by a teacher using a packet of rulers held together by rubber bands. The injury was severe enough to cause noticeable discoloration and to prevent use of the hand for several days. Mrs. C. reported that the teacher involved in this incident is still at the school, having been promoted to the rank of "Counsellor".

She also reported that there were several teachers who were known to parents as habitual administrators of corporal punishment and that the result has been the creation of a common impression in the minds of many parents that the school is conducted by a "reign of terror". [26]

New Jersey

New Jersey is the only state that expressly prohibits the use of corporal punishment in schools. Despite this prohibition, corporal punishment has been used in Jersey schools, according to one man who taught in New Jersey:

> On many occasions I witnessed teachers pulling students in and out of lines, shoving them into seats, and dragging them from classrooms. I doubt that any of these acts were necessary to quell a disturbance, obtain possession of weapons, protect persons or property, or as a means of self-defense . . .*

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* The only circumstances under New Jersey law in which a teacher may use force.

> A first-grade boy spoke back to his teacher in the cafeteria and refused to stand in the corner as directed. His teacher and another lifted him bodily, one on each arm, and he was carried screaming into the office. His fate there is unknown. Another first-grade teacher was seen to slap one of her students in the face and to smack another on the behind. When confronted by a colleague with the corporal punishment law, this teacher replied, "I'm a lawyer. I know the law." (She is.)*

Dallas

Newsweek Magazine and newspapers in Dallas recently focussed attention on the widespread use of corporal punishment in the Dallas schools. In the nine months prior to June, 1971, 5,358 spankings were reported to the office of Dallas director of student affairs, according to the director, George Reid. When interviewed by the Dallas Morning News, Reid refused to speculate on how many unreported spankings have occurred. The school superintendent, Nolan Estes, and the school board tolerate and encourage the frequent violations by teachers of the board's corporal punishment policy. Newsweek Magazine (May 17, 1971) reported some of the many incidents of physical discipline that took place recently in Dallas

> Eleven-year-old Annette Savage, for example, was spanked four times in one month by Maple Lawn Elementary School Principal Arne Goddard, who regularly stalks through his building's lunchroom with a 22-inch paddle made from a baseball bat. When Annette's father appeared at a school board meeting to complain, Estes abruptly cut him off and proceeded to chastise the board for even permitting Savage to appear.

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* From Nat Hentoff's column in the Village Voice, June 17, 1971, p. 25.

In the same article, Newsweek also reported:

> Last year, after talking with the parents of a child whose buttocks were hemorrhaging from a school whipping, a member of the Dallas school board introduced a resolution to temper the city's corporal punishment policy. But he quickly withdrew it when Nolan Estes vigorously objected. "I will not be superintendent," the 40-year-old former U.S. Office of Education official declared, "in a district where principals are not allowed to spank."

The Dallas Morning News (May 23, 1971) also reported on the corporal punishment abuses in the school system:

> . . . Dallas teachers . . . readily talk about spanking students for misspelling words, inattentiveness and failure to say "sir", among other transgressions. One teacher at Stockard Junior High . . . has what he calls "double stamp day" on Wednesdays. A student's transgressions are punishable on that day by double the number of licks adminstered during the remainder of the week. "I do what I call 'warmin them up' with five or six taps and then give one hard lick," the teacher said. Students are spanked in front of the room at the conclusion of the class for failure to say "sir", entering the class with shirttails out, or throwing at and missing the wastepaper basket, he said.

Mr. Marshall Ware of Dallas, Texas, related the following situation:

> Our third boy (age 14, IQ 121) has a minimal brain dysfuncti symptomized by visual-motor problems, short attention span, clumsiness, and spelling/writing difficulties. Labelling this as "not paying attention" and "laziness" has resulted in spankings from the first grade -- plus ridicule and the destruction of dignity by teachers. Last September -- fearing he would eventually be a drop-out or emotional wrec we placed him (where he still is) in the Angie Nall School-Hospital for Emotional Retraining in Beaumont, Texas . . . We hope to have this boy back home next fall but fear the problems which will arise with the public schools' policy of physical punishment. Our second son (age 16, excellent IQ, physically perfect and champion swimmer, sensitive and astut to personalities and hypocrisy) has the problem of being

> outspoken, and can be profiled by the typical undesirable teenage characteristics as outlined by Gesell, Ilg and Ames. The school, trying to train him with regular paddling, caused him to become a behavior problem, and his grades to drop (from Bs) to Ds and Fs in all classes. He is now having regular psychiatric sessions. We have doubts if he will ever be interested in high school again -- but we do hope that he will cease to be disinterested in living.

The Dallas Times Herald (Jan. 10, 1970) reported the case of an assistant principal at Mesquite High School who paddled two seniors five times each with a three-foot-long pine board. One Dallas student, Bennie Brown, was suspended for three days from Sunset High School. The school's Suspension Report offered this as justification for the suspension: "Disturbing in Mr. McKain's class; wouldn't take corporal punishment." The Report further noted: "paddle when he returns."

Other Cities

Complaints about the use of corporal punishment on school children in other parts of the country were cited by Nat Hentoff in an article in Civil Liberties of January, 1972. The following accounts are drawn from that article.

In testimony before the Los Angeles Board of Education, Elsa Kievits, speaking on behalf of the ACLU, told of many incident of corporal punishment in that city's schools. One complaint came from a father who noted that "his son had once been hit with a stick because he had put his foot on a desk while tying his shoe and another time because he had covered a book. On one occasion,

the parent charged, his son had been hit on the head with a book."

The Waterboro, South Carolina daily paper, the Press and Standard, on October 28, 1971, reported on a local school board meeting as follows:

> /Some parents/ expressed displeasure that their children were coming home with bruises over their bodies as a result of being slapped, being rapped over the knuckles and hands, and being paddled with unnecessary roughness. At least two mothers claimed that their children had been punished in this manner because they had made mistakes in their homework. Another mother reported that her child, who has an asthmatic condition, had been beaten on the hands, and had suffered an attack the next day. She stated that she had previously explained the child's condition to the school principal, but that the teacher in question had nevertheless hit the girl's hands so hard "that they nearly cracked."

An Illinois minister and his wife wrote a letter to Mr. Hentoff about the experience of their six-year-old daughter:

> She looked forward to attending kindergarten with great joy, and even anticipated entering first grade this fall with considerable enthusiasm. In each instance, however, her enthusiasm has been quickly dampened by the repeated warning and continual threat of physical punishment -- specifically the application of a paddle which her teacher . . . keeps for "disciplinary" reasons. Although she herself has never been paddled (despite an occasional threat to do so if she didn't stop crying about the threat to do so), the psychological threat of its use, together with enough observation of its use on others to make that threat convincing, has caused irreparable damage to her attitude toward school, teachers, and education generally.

RECENT COURT ACTION

Within the past two years, several suits have been instituted challenging the constitutionality of corporal punishment in the public schools, but the decisions so far have not been encouraging. In July, 1971, the U.S. District Court of New Mexico, in Sims v. Board of Education[27], ruled that neither due process, equal protection privileges and immunities, free speech, nor cruel and unusual punishment clauses invalidated the New Mexico school board policy of administering corporal punishment to students. The case involved a student who had been given three strokes for violating school rules after an article belonging to the craft department was found in his possession. Stating that it could not and would not substitute its judgment for that of the school board on what regulations are appropriate to maintain order and insure respect of pupils, the court declared:

> Although school authorities may not act arbitrarily or capriciously in the formation or enforcement of school regulations, they do have the power to promulgate and enforce responsible regulations governing students and attendant power to impose reasonable non-discriminatory corporal punishment for breaches thereof without violating any federally constitutional right of pupils.

In another 1971 case (Ware v. Estes[28]), the U.S. District Court for the Northern District of Texas was petitioned to enjoin Dallas schools from allowing the use of disciplinary violence without the consent of parents. A series of witnesses described

several instances of physical abuse against students. The Dallas Morning News of May 14, 1971, reported on the proceedings:

> One witness, Roderick Oliver, 16, testified he was knocked unconscious last year by a teacher who objected when he re-entered Sarah Zumwalt Junior High School after school for a drink of water. Oliver's father said under cross examination . . . that the teacher told him his son cursed him before he swung at the boy . . . Walter Kaspareit, the swimming coach, said he had whipped him /Douglas Ware, one of the two plaintiffs/ in excess of a dozen times with a shoe and a paddle for failure to pay a towel fee, being late to workouts and not bringing equipment.

Federal Judge William H. Taylor, Jr., refused to issue the injunction on the grounds that he had no jurisdiction in the case. He further stated that "no violation of students' constitutional rights had been established during the two-day hearing." The ACLU of Texas is appealing the decision.

More recently (January, 1972), a federal judge rejected a plea for a temporary ban on paddling in the Northgate, Pa. School District*, Glaser v. Marietta. The request was made by the mother of a 12-year-old boy who had been smacked with a paddle three times for fighting in the classroom. While refusing to issue the ban, Judge Joseph F. Weis, Jr., did admit that certain instances of corporal punishment might be judged unconstitutional. The ACLU of Pittsburgh is taking the case back to court, this time seeking a permanent injunction against corporal punishment in the Northgate public schools.

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* This is in Allegheny County, outside the city of Pittsburgh.

The following cases have had more favorable outcomes but in light of the decision in Sims (above) particularly, their influence is considered minimal by informed observers. A suit filed in 1970 by parents of abused Boston school children against the offending teachers, school administrators, and the Boston School Committee was settled without a trial. With the consent of all parties, the U.S. District Court in Massachusetts decreed that the Boston school board and its employees be enjoined "from imposing corporal punishment in any form under any circumstances against any Boston public school students." (Murphy v. Kerrigan)* In a 1969 decision a Tennessee high school student was awarded damages for physical injury and mental distress suffered when a teacher jerked a chair from under him for a minor infraction during a study hall. The court rejected a Fourth Amendment claim in the absence of a search and seizure, but ruled that under the Eighth Amendment the student could recover for a violation of his claim not to be injured intentionally by state officials (Patton v. Bennett).[29]

Other corporal punishment suits raising constitutional issues are now pending in courts across the country.

In Northern California, a suit by black parents and minority students seeks to have corporal punishment in the Oakland Unified School District declared unconstitutional pursuant to the

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* This order was limited to the period of office of the then members of the School Committee. It expired on January 1, 1972, when new members took office.

Fourteenth Amendment of the United States Constitution and the laws of California. The plaintiffs contend that "corporal punishment tends to inhibit learning, retard social growth, and force acceptance of class position." (Smith v. Jackson)

The ACLU is participating in a class action suit (School Committee v. West Virginia Board of Education) instituted by a group of parents who tried for two years without success to persuade the local board of education to rescind its policy of permitting corporal punishment. The plaintiffs contend:

> The infliction of corporal punishment on public school studen on its face abridges the "privileges and immunities" of all such students . . . including their rights to physical integrity, dignity of personality and freedom from arbitrary authority in violation of the Fourth, Ninth and Fourteenth Amendments . . . The infliction of corporal punishment on its face "deprives" all public school students of "liberty without due process of law" in violation of the Fifth and Fourteenth Amendments . . . since it is arbitrary, capricious, and unrelated to achieving any legitimate educational purpose. On the contrary, the use of corporal punishment in the schools results in a hostile reaction to authority, breeds further violence and interferes with the educational process and academic inquiry.

In an affidavit, the father of one of the plaintiffs, a nine-year-old, states:

> On or about April 15, 1971, my son . . . was paddled in school for allegedly possessing bubble gum and potato chips while in the confines of the Cass District Elementary School. The bubble gum and potato chips had been purchased for (my son) by the janitor of the Cass District Elementary School during the day. (My son) was black and blue on the back of his thighs and had a splinter on the back of his left thigh, which was removed that very day. The marks extended on the small of his back and to the back of his legs.

The plaintiffs are asking the Federal District Court for a declaration that "corporal punishment in the West Virginia public schools is unconstitutional" and an injunction to prevent "the further use of corporal punishment in the schools."

A taxpayer's suit (Fiske v. Los Angeles Board of Education), filed in California Superior Court on February 7, 1972, by the ACLU of Southern California, likewise followed an unsuccessful attempt to abolish corporal punishment in schools through administrative channels. The effort terminated when the Los Angeles Board of Education voted 4-3 to continue the practice.* The complaint, which seeks a ban on corporal punishment in Los Angeles public schools, challenges the constitutionality of both the state statute which authorizes corporal punishment and the Los Angeles regulations for administering it.

Litigation on this issue is also underway in Florida and inquiries to the ACLU indicate that legal action is being considered in several other states.

STATE STATUTES

The legal right of public school officials to inflict violent bodily punishment on students without being guilty of assault and battery has been so well established in common law that many state

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* See Appendix.

codes make no mention of the practice. In recent years, however, as the use of corporal punishment has increasingly come under fire from parents and professional educators, a number of state legislatures have passed bills imposing some restraints on its use. Two states, New Jersey* and Maryland, have outlawed the practice, although in the latter case, some rural counties have won the option to reinstate it. (It has also been banned in Washington, D.C., New York City, Pittsburgh, Baltimore, Chicago, Grosse Point, Mich., and in many individual school districts where the state allows the local board of education discretion in the matter.**) However, between 1958 and 1970, eight states passed statutes expressly permitting the use of violent bodily punishment in the public schools.[30] At the present writing there are at least thirteen states with laws which allow teachers to engage in the practice, and thus may prohibit boards of education and school administrators from banning it. The following chart lists the thirteen states and their respective statutes:

California: Teacher in role of parents (so probably can hit).[31]

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* See pages 21-22 for reported instances of corporal punishment in violation of the law.

** As noted in the previous section, a pre-trial consent agreement resulted in a court order that prohibited the use of corporal punishment in Boston public schools until January 1, 1972. No new court action has been taken, but a bill is now before the Massachusetts state legislature (House Bill #2272) to prohibit school committees from adopting regulations which would permit corporal punishment in the public schools. The prospects for its passage appear to be favorable.

Delaware: Teacher and administrator in role of parents.[32]

Florida: Teacher may use corporal punishment but only after he consults with the principal, and it may not be severe.

Hawaii: Any punishment including corporal which is necessary and reasonable.

Michigan: May use any physical force necessary to maintain proper discipline over pupils.

Montana: Corporal punishment only in presence of another teacher or principal and with notice to a parent or guardian, except in open defiance when no notice needed.

Nevada: Corporal punishment discouraged, but not prohibited. Each school district can adopt rules providing for reasonable corporal punishment. But there can be no corporal punishment on face or head except in self-defense.

North Carolina: Can use reasonable force.[33]

Ohio: Teacher may use reasonable corporal punishment if reasonably necessary to preserve discipline

Pennsylvania: Teacher in role of parents (in loco parentis).

South Dakota: Corporal punishment if reasonable and necessar

Vermont: Any reasonable form of punishment including corporal to a reasonable degree.

Virginia: Reasonable corporal punishment in good faith and not excessive.[35]

An NEA study, published in 1970, included a survey of statut concerning corporal punishment. The survey had this to say about such statutes:

> About one-third of the states expressly provide by statute that one of the teacher's duties is to maintain order and discipline among pupils . . . Another type of statute, found in Louisiana, Oklahoma, Pennsylvania, and West Virginia, definitely places the teacher in the position of the parents in exercising authority to control and discipline the child during the time he is in attendance at or on his way to or from school.[36]

The survey concluded:

> While most states lack statutes that expressly extend to teachers the privilege of disciplining pupils by corporal punishment, indirect statutory restrictions or sanctions on corporal punishment may exist apart from school laws. The restrictions to be noted are those in the laws forbidding cruelty to children. Such laws exist in virtually all states and under them the teacher would be liable if the physical chastisement used to correct a pupil's conduct is excessive, or administered by a dangerous instrument, or in an improper manner.
>
> Also noteworthy is the recognition of the authority of the teacher to apply corporal punishment in the penal codes in some states (as, for example, New York and Texas). This recognition appears through the exclusion from the definition of assault and battery of the exercise by the teacher of force reasonable in manner and moderate in degree, to restrain and correct a pupil.[37]

PUBLIC ATTITUDES

Unfortunately, a majority of the general public still regards the use of violent bodily punishment in schools as a legitimate, necessary, and desirable practice. A 1970 Gallup poll found that 62% of the people surveyed favored "spanking and similar forms of physical punishment" in the lower grades. In the same poll 53%

said that discipline in the schools was "not strict enough," 31% termed it "just right," and only 2% thought it was "too strict." The remaining 14% said they had no opinion. The poll also showed that lack of discipline was considered the number one problem in the schools.[38]

Reflecting this view, no less an august body than the Federal Commission on Reform of the Federal Criminal Code, headed by former California Governor Edmund Brown, has made a recommendation that expressly allows the use of corporal punishment on school children. It reads:

> The use of force upon another person is justified under any of the following circumstances:
>
> (a) A parent, guardian or other person responsible for the care and supervisionof aminor under eighteen years old, or teacher or other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use force on the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force used for this purpose may be such as is reasonable . . . but must not be designed to cause or known to create a substantial risk of causing death, serious bodily injury, or gross degradation.

Given the national concern over "law and order", the attack on laxity and permissiveness as presumed causes of student unrest, and the tendency in many quarters to advocate simple solutions to complex problems, the attitude of the public and even government-appointed commissions is hardly surprising. An illustration of

the intensity of feelings on this subject was provided recently in Dallas, where violent bodily punishment has been a matter of public controversy; four members of the school board were defeated for re-election by candidates who advocated even tougher school discipline

On the other hand, in various parts of the country, small groups of determined opponents of the practice, such as the Dallas Citizens Against Physical Punishment and the Committee for the Abolition of Corporal Punishment in Pittsburgh, mentioned above, have dedicated themselves to work for its banishment from the public schools.

* * * * * *

The use of physical violence on school children is an affront to democratic values and a constitutional infringement of individua rights. It is a degrading, dehumanizing, and counter-productive approach to the maintenance of discipline in the classroom and should be outlawed from educational institutions as it has already been outlawed from other institutions in American society. With the cooperation of school personnel and the general public -- all those concerned with the rights of children, child care, and education -- this urgent national objective can be achieved.

A P P E N D I X

The Los Angeles Board of Education January 27 refused 4-3 to abolish corporal punishment in the public schools. Among those urging its abolition was Joyce Fiske, of the American Civil Liberties Union of Southern California Education Committee and head of Parents for Equity in Education, who made the following statement before the Board:*

By Joyce Fiske

Today you are to vote on a proposal to abolish corporal punishment in the Los Angeles schools, a proposal that is controversial because it involves our deepest and most fundamental attitudes about human beings and about the nature and purpose of education, and of life itself. I come here today to "speak truth to power," to use a felicitous phrase of the Quakers. Fully aware of the powerful forces and groups who have put their full weight against this proposal, I ask you to examine with me some of the things said in support of the use of corporal punishment and to judge whether or not they stand up under the light of reason.

First, there is the matter of the law. Although many have believed that the board was legally obligated to have a policy allowing corporal punishment, it now seems abundantly clear from a commonsense reading of the text and from the opinion of the legislative counsel that the board can no longer say: we are obligated by law to have corporal punishment. You have options and must weigh the virtues and deficiencies of each.

Second, there is the claim, not so much as an argument as a defense of the status quo, that corporal punishment is only used as "a last resort," or, in the words of an officer of the secondary administrators, is "used sparingly." That is unequivocally a myth, and one we must dispel if we are to understand the present situation make a judicious decision about the future. Corporal punishment is widely and frequently used, and not as a last resort. It is used for such trivial offenses as tardiness, being in a minor fight, for talking to another student in class even if no disruption occurs, for throwing a piece of gum, for not getting high enough grades. It appears to be used quite regularly by some classroom teachers, by many gym teachers, often without a witness, and many times arbitrarily, severely and suddenly. Some of our teachers with a low threshold of frustration use it or ask to have it used a great deal. Many

* Reproduced from ACLUSC <u>OPEN FORUM</u> Feb., 1972.

of our best teachers and principals do not use it at all.

Generates Resentment

Even in cases where it is supposedly used as a last resort on students who are seriously disruptive in the classroom or who commit violent acts on others, nobody has shown that it is in any way effective in helping the student to develop more responsible, self-disciplined behavior or even in helping other students and teachers be more secure. In fact, use of violence on such students generates rage, resentment and hostility and may intensify the very behavior problems that triggered the punishment.

Third, there is the argument about insufficient resources. Apart from the fact that the excuse of "insufficient resources" has been used to justify cruel and harsh treatment now made illegal in most institutions, such as mental hospitals, prisons, army and navy., it is important to know that in many cases where children are struck, no additional counselling resources are needed, since there was no serious misbehavior to begin with. In many other cases, the resources which are available in the school and community were not fully utilized.

But more importantly when we talk about insufficient resources, about poverty in some communities, about limited counselling, about overcrowded classrooms, we must ask ourselves as thinking human beings, entrusted with the care of the young, what justifies punishing them if a poorly functioning social system or an unfair and inadequate tax structure fails to provide for their needs. Must children be the scapegoat for what they did not cause, such as overcrowding and would not choose?

The fourth kind of justification given for keeping corporal punishment, a variation of the above argument about resources, is that we can't get rid of it until we have provided alternatives. What is tragically lacking here is the insight that so long as there is the institutionalizing of corporal punishment with its use sanctioned by higher authority, it will be a barrier to the development of other alternatives and to the renewal which the Superintendent has committed us to.

The fifth defense of corporal punishment is that "this is the only language that some children understand." A system which allows teachers and principals to base their behavior on this perception is truly bankrupt. If this is the language that some children understand, the language of force and violence, surely it is because the society, perhaps even the family, has been violent toward them. To have a teacher justify striking a student to change his behavior by saying he is used to striking and being struck would be like the

therapist or social worker justifying beating the victim of child abuse whom they are treating because he is used to this treatment. If this is what some young people understand, it is up to the schools, which are supposed to be centers for learning and growth, to teach them a new language.

Further Deterioration

Sixth, some school officials have justified the status quo by saying "they want it," they "they" being parents and/or students. A well-known psychologist has commented on this familiar form of reasoning: children may ask for drugs, and adults too but that doesn't mean we give it to them. Besides, any expert in child development will tell you that while some young people through disruptive behavior seem to "ask for punishment" these may be the very students most in need of help and to continue to punish them causes a further deterioration in their mental health. As far as parents wanting corporal punishment, since staff has failed to heed many legitimate parental demands, I find it a little odd to hear them say that parents must be given what they want, even if what they want violates principles of sound education and mental health.

Seventh, the continuance of present board policy is urged because abolishment of corporal punishment would be too fundamental a change, which couldn't be achieved without staff development and extensive retraining. What a shocking comment--that complete re-education of our educators would be necessary in order to run the schools without hitting children. Even if it were true, and for many dedicated, sensitive, and humane teachers and principals it would not be true, such an argument evades the central question that must be asked: "Is this policy good for young people?" According to nearly unanimous expert testimony, according to the most modern insights and information drawn from a variety of professional disciplines, according to informed community opinion including that of the three educational commissions (the Black Education Commission, the Mexican-American Education Commission, and the Asian Education Commission), it is not.

NOTES

1. "Corporal Punishment: Teacher Opinion," NEA Research Bulletin, vol. 48, no. 2 (May, 1970), pp. 48-49. Overall the survey found a small shift to the "no" and "don't know" categories since 1960.

2. Wall Street Journal, June 16, 1970, p.1

3. Ibid.

4. Charles T. McElvaney, Statement on the Proposed New By-Law 741:2 Corporal Punishment, for the Public Hearing of the Maryland State Board of Education, January 27, 1971, p.9.

5. West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

6. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

7. In re Gault, 387 U.S. 1 (1967).

8. McElvaney, op. cit., pp. 6-7.

9. Trop v. Dulles, 356 U.S. 86 (1958).

10. Cooper v. McJunkin, 4 Ind. 290 (1853).

11. Metropolitan Detroit Branch, American Civil Liberties Union of Michigan, Corporal Punishment in the Public Schools, prepared by David Wineman et al. (mimeo), 1967, p. 13.

12. Dallas Morning News, May 13, 1971.

13. Metropolitan Detroit Branch, ACLU, op. cit., p. 14; See also Jones, Blackstone, Bk. I, p. 644 (1915).

14. For an analysis of the doctrine and its defects, see Stephen R. Goldstein, "The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis", University of Pennsylvania Law Review, vol. 117, no. 3 (January, 1969), pp. 373-430, especially pp. 377-387.

15. Citizens Against Physical Punishment, Dallas, Texas, Statement.

16. Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925).

17. McElvaney, op. cit., p.4.

18. Boyd R. McCandless, Children: Behavior and Development, 2d ed., (New York: Holt, Rinehart and Winston, 1967), p.152

19. Metropolitan Detroit Branch, ACLU, op. cit., pp. 20-21.

20. For descriptions of effective and professionally defensible disciplinary procedures, see Fritz Redl and William W. Wattenberg, Mental Hygiene in Teaching, 2d ed., (New York: Harcourt, Brace and World, 1959), ch. 13; Willaim J. Gnagey, The Psychology of Discipline in the Classroom (New York: The Macmillan Company, 1968); William Glasser, Schools Without Failure (New York: Harper and Row, 1969); Rudolf Dreikurs, Psychology in the Classroom, (New York: Harper and Bros., 1957); Ovid F. Parody, The High School Principal and Staff Deal with Discipline (New York: Columbia University Teachers College Bureau of Publications, rev. ed., 1961); Kenneth L. Fish, Conflict and Dissent in the High Schools (New York: Bruce Publishing Company, 1970); Rolf E. Muuss, First-Aid for Classroom Discipline Problems (New York: Holt Rinehart and Winston, 1962); Richard Farley, Secondary Modern Discipline: With Special Reference to the "Difficult" Adolescent in Socially Depressed Industrial Areas (London: Adam and Charles Black, 1960); Edward T. Ladd, The Governing of Schoolchildren (Washington, National Association of School Principals, 1972)

21. See Erik Erikson, Childhood and Society (New York: W.W. Norton Co., 1963, 2d ed.); Fritz Redl and David Winemen, Controls from Within (Glencoe, Illinois: The Free Press, 1962); and Nicholas J. Long et al., eds., Conflict in the Classroom (Belmont, California: Wadsworth Publishing Co., 1965).

22. See Arthur L. Stinchcombe, Rebellion in a High School (Chicago: Quadrangle Books, 1964) and James S. Coleman, The Adolescent Society (New York: The Free Press, 1961).

23. McCandless, op. cit., p.152.

24. Eugene E. Levitt, "Sadomasochism," Sexual Behavior, vol. 1, no. 6 (September 1971); pp. 68-80.

25. Jonathan Kozol, Death at an Early Age (Boston: Houghton Mifflin Company, 1967).

26. Metropolitan Detroit Branch, ACLU of Michigan, op. cit., p.9.

27. Sims v. Board of Education, 40 U.S.L.W. 2058-59 (1971).

28. Ware v. Estes, 39 U.S.L.W., 2733 (1971).

29. Patton v. Bennett, 304 F. Supp. 297 (E.D. Tenn., 1969).

30. Newsweek, May 17, 1971, p.99.

31. Jean Strouse, Up Against the Law, (New York: New American Library, 1970).

32. Act to Amend Delaware Code, Title 14, Chapter 7, Section #701.

33. Strouse, op. cit.,p. 68.

34. Ohio Educational Code, Sec. 3319.41, p.660.

35. Strouse, op. cit., p.68.

36. "Corporal Punishment and the Law," NEA Research Bulletin, vol. 48, no. 2 (May, 1970) p. 47.

37. Ibid.

38. Phi Delta Kappan, vol. 2, no.2 (October, 1970), p. 101.